

# Notice of Allowability

Application No.

10/009,002

Examiner

Zachariah Lucas

Applicant(s)

BUKH ET AL.

Art Unit

1648

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of May 3, 2006, and the interview of May 31, 2006.
2. ☒ The allowed claim(s) is/are 1-8 and 11-18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 5/3/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 5/31/06, 6/12/06.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-8, and 11-18 are pending and allowed as amended below.
2. In the prior action, mailed on December 30, 2005, claims 1-40 were pending; with claims 9,10,and 19-40 withdrawn from consideration, claims 1, 4, 6-8, and 11-17 rejected; and claims 2, 3, 5, and 18 objected to.

In the Response of May 3, 2005, the Applicant cancelled claims 9, 10, and 19-40; and amended claims 1, 6-8, and 11-14.

### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interviews with Nancy W. Vensko on May 31, 2006 and on June 12, 2006.

The application has been amended as follows:

On page 1, the following sentence is inserted on line 3 (above the Field of Invention heading): This application is a 371 of international application PCT/US00/15293, filed June 2, 2000, which claims benefit of provisional application 60/137,394, filed June 4, 1999.

In claim 1, the phrase "is encoded by" has been deleted and replaced by the term - - includes- -.

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In claim 17, the phrase "a suitable amount of" is deleted.

In claim 18, the phrase "a suitable amount of" is deleted.

The amendment to claim 1 is to clarify that the 3' UTR comprises the indicated last 259 residues in addition to the other known portions of the GB-virus B 3' UTR, and is not limited to those 259 nucleotides.

The amendments to each of claims 17 and 18 were made because it was not clear what the "suitable amount" was suitable for.

#### ***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on May 3, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

#### ***Specification***

5. **(Prior Objection- Withdrawn)** The specification was objected to for containing referring to sequences without also identifying them by the sequence identifier assigned to them in the sequence listing as required by 37 CFR 1.821(d). See, Figures, 3, 4, 6, and 7. In view of the amendment of the application, the objection is withdrawn.

#### ***Claim Rejections - 35 USC § 101***

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6. **(Prior Rejections- Withdrawn)** Claims 6-8, and 11-14 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In view of the amendments of the claims, the rejections are withdrawn:

***Claim Rejections - 35 USC § 112***

7. **(Prior Rejections- Withdrawn)** Claims 1, 4, 6-8, 11-13, and 15-17 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement with respect to the claimed genus of polynucleotides comprising any nucleic acid molecule encoding GB virus-B (GBV-B) and capable of expressing the virus when transfected into a cell. In view of the amendment of the claims to specify that the complete 3' UTR of the viral genome is present, and the indication in the arguments that the reference to the infectious GB-virus B that is infectious refers to a full-length clone of the remainder of a GB-virus B genome, the rejection is withdrawn.

***Claim Rejections - 35 USC § 102***

8. **(Prior Rejection- Withdrawn)** Claims 8, and 11-13 were rejected under 35 U.S.C. 102(b) as being anticipated by Simons et al. (PNAS 92: 3401-05). In view of the amendments to the claims, the rejection is withdrawn.

***Conclusion***

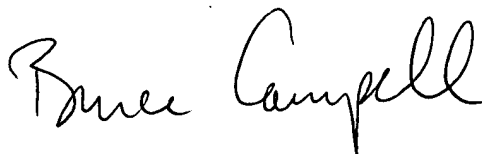
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z. Lucas  
Patent Examiner

A handwritten signature in black ink that reads "Bruce Campell". The signature is written in a cursive, flowing style.

BRUCE R. CAMPPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600